



Legislative Update

MSFC SBELT 23 August 2022



Topics for Conversation

- ❑ 2022 NAICS Revision Changes/Clarification
- ❑ Past Performance Ratings for 1st Tier Subcontractors
- ❑ VOSB and SDVOSB Certification Reminder
- ❑ Guidance on Inflation & Economic Price Adjustments
- ❑ Declining Number of SB Contractors & Category Management Reform
- ❑ Status of SBIR/STTR Program
- ❑ Quick Links to FAR & DFAR Cases & Deviations

NAICS 2022 Revision

<p>AGENCY: U.S. Small Business Administration.</p> <p>ACTION: Proposed rule.</p> <p>SUMMARY: The U.S. Small Business Administration ("SBA" or "Agency") proposes to amend its small business size regulations to incorporate the U.S. Office of Management and Budget's (OMB) North American Industry Classification System (NAICS) revision for 2022, identified as NAICS 2022, into its table of small business size standards. The NAICS 2022 revision created 111 new industries by reclassifying, combining, or splitting 156 NAICS 2017 industries or their parts. SBA's proposed size standards for these 111 new industries under NAICS 2022 have resulted in an increase to the size standards for 21 industries and 27 parts of three industries under NAICS 2017, a decrease to size standards for seven industries and 41 parts of one industry, a change in the size standard measure from average annual receipts to number of employees for one industry, a change in the size standard measure from number of employees to average annual receipts for a part of one industry, and no change in size standards for 118 industries and 33 parts of eight industries. SBA proposes to adopt the updated table of size standards, effective October 1, 2022.</p>	<p>Printed version: PDF</p> <p>Publication Date: 07/05/2022</p> <p>Agency: Small Business Administration</p> <p>Dates: SBA must receive comments to this proposed rule on or before August 4, 2022.</p> <p>Comments Close: 08/04/2022</p> <p>Document Type: Proposed Rule</p> <p>Document Citation: 87 FR 40034</p> <p>Page: 40034-40087 (54 pages)</p> <p>CFR: 13 CFR 121</p> <p>RIN: 3245-AH89</p>
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- Revision created new NAICS.
- Revised, deleted, or consolidated numerous definitions & codes.
- Impacted about 170 industry definitions & codes.

Important Notices:

1. Businesses registered in the System for Award Management (SAM.gov) must update their SAM registration in order to have their small business status updated based on the new size standards effective July 14, 2022. Until the SAM registration is updated, the SAM profiles will continue to display the small business status under the old size standards.

2. In accordance with SBA's [recently issued guidance](#), SBA advises all procurement professionals not to use NAICS 2022 codes when preparing solicitations and awarding contracts until SBA updates its small business size standards to NAICS 2022, which SBA anticipates implementing on October 1, 2022. Until SBA updates its size standards, the NAICS 2017 codes should be used.

These size standards are effective

July 14, 2022



Past Performance Ratings for **Small Business** JV Members and **Small Business** First-Tier Sub

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SUMMARY:

The U.S. Small Business Administration (SBA) is amending its regulations to implement new provisions of the National Defense Authorization Act (NDAA) Fiscal Year (FY) 2021. The final rule provides new methods for small business government contractors to obtain past performance ratings to be used with offers on prime contracts with the Federal Government. A small business contractor may use a past performance rating for work performed as a member of a joint venture or for work performed as a first-tier subcontractor. This final rule updates the requirements for small business subcontracting plans to add a requirement for prime contractors to provide past performance to a first-tier, small business subcontractor when requested by the small business.

Agency:

[Small Business Administration](#)

Dates:

This rule is effective on August 22, 2022.

Effective Date:

08/22/2022

Document Type:

Rule

Document Citation:

87 FR 43731

Page:

43731-43740 (10 pages)

CFR:

13 CFR 125

RIN:

[3245-AH71](#)

Document Number:

2022-15622

**Limited to first-tier SB subs on a prime contract that included a subcontracting plan.
Requires the prime to provide a rating within 15 calendar days of the request.**

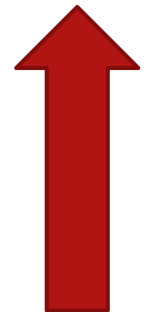


Past Performance Ratings for First-Tier Sub

Open FAR Cases as of August 12, 2022

Case Number	Part Number	Title	Synopsis	Status
2021-011	15	Past Performance of First-Tier Subcontractors	Implements the requirements of SBA's final rule published October 16, 2020 (85 FR 66146) for consideration of the past performance and experience of first-tier subcontractors for the award of bundled or consolidated contracts and certain multiple-award contracts, and other procurements, as appropriate.	05/12/2021 DARC Director tasked Acquisition Small Business Team to draft proposed FAR rule. Rule transferred to the Acquisition Strategy Team. Report due 07/14/2021. Report due date extended to 08/24/2022.

- first tier subcontractors in certain instances,
- bundled or consolidated contracts,
- multiple award contracts valued above the substantial bundling threshold



VOSB and SDVOSB Certification

NDAA 2021 amended the VO SBC/SDVO SBC requirements to transfer the responsibility for certification of VO SBCs and SDVO SBCs to SBA as of January 1, 2023 (Transfer Date) and created a certification requirement at SBA for SDVO SBCs seeking sole source and set-aside contracts across the Federal Government.

Section 862 also created a one-year grace period after the Transfer Date for businesses currently self-certifying to file an application for SDVO SBC certification with SBA. Self-certified SDVO SBCs that submit an application within the one-year grace period will maintain eligibility until SBA makes a final eligibility decision.

Agency:

[Small Business Administration](#)

Dates:

Comments must be received on or before August 5, 2022.

Comments Close:

08/05/2022

Document Type:

Proposed Rule

Document Citation:

87 FR 40141

Page:

40141-40164 (24 pages)

CFR:

13 CFR 121

13 CFR 125

13 CFR 128

RIN:

[3245-AH69](#)

Document Number:

2022-13563

DoD Guidance on Inflation & Economic Price Adjustments

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May 25, 2022

DoD-Guidance on Inflation
and Economic Price
Adjustments.pdf



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Guidance on Inflation and Economic Price Adjustments

The current economic environment requires we understand the impacts of inflation to existing contracts and consider various approaches to manage risk of inflation to prospective Department of Defense (DoD) contracts. We acquire a wide range of goods and services to fulfill the Department's mission requirements; inflation is impacting several segments of our economy in varying degrees. Against this backdrop, DoD contractors and contracting officers (COs) alike have expressed renewed interest in using economic price adjustment (EPA) clauses. This memorandum provides guidance to assist COs to understand whether it is appropriate to recognize cost increases due to inflation under existing contracts as well as offer considerations for the proper use of EPA when entering into new contracts.

GSA Economic Price Adjustment (EPA)



3/17/2022

GSA Office of Governmentwide Policy
Acquisition Letter MV-22-02

March 17, 2022

AL MV-22-02: Temporary
Moratorium on EPA
Clauses (gsa.gov)

MEMORANDUM FOR FAS HEADS OF CONTRACTING ACTIVITY

FROM:

JEFFREY A. KOSES
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

DocuSigned by:

Jeffrey A. Koses

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MARK J. LEE
ASSISTANT COMMISSIONER
OFFICE OF POLICY AND COMPLIANCE (QV)
FEDERAL ACQUISITION SERVICE

DocuSigned by:

Mark Lee

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SUBJECT: Temporary Moratorium on Enforcement of Certain Limitations Contained in Certain GSA Economic Price Adjustment (EPA) Contract Clauses

- Purpose.** This Acquisition Letter (hereinafter Letter) establishes temporary flexibility on limitations on price increases. This Letter also provides a temporary moratorium on the enforcement of a number of limitations contained in certain GSA EPA contract clauses. These steps are taken in recognition of the impact of inflation on GSA contractors and their ability to support federal agencies.
- Background.** Various factors continue to impact the global economy and disrupt supply chains, leading to general shortages and delays as well as price volatility. During this unusual time, GSA is seeing an increase in contract modification requests from contractors to increase pricing.



Category Management Spend Under Management (SUM)

- Tier 0 - Spend NOT Aligned to Category Management Principals
- Tier 1 - Mandatory Agency-wide Contract Solution
- Tier 2 - Multi-agency Solutions ←
- Tier 3 - BIC

CONTRACTING

SBA working to reform category management, reverse decline in small business contractors

 Daisy Thornton | @dthorntonWFED
June 27, 2022 2:47 pm ⌚ 4 min read

  SBA working to reform category management, reverse decline in small business contractors

    00:00:00

SBIR/STTR Update

- SBIR/STTRs set to expire September 30.
- Lack protection between ties between awardees & China.
- SBIR “Mills” — a term given to a small group of companies who win many Phase I and II awards but allegedly don’t actually do much actual commercialization and use the government funding as their primary revenue stream.

Lawmakers propose changes to SBIR as program renewal deadline nears

However the tech-focused small business program proceeds, some lawmakers are calling for change in how SBIR operates, according to documents obtained by Breaking Defense.

By JASPREET GILL on August 08, 2022 at 2:08 PM



Congress

Paul to oppose small business program Pentagon uses to spur innovation

By [Joe Gould](#) and [Bryant Harris](#)

Monday, Jun 20



Open FAR Cases (8/12/2022)

Open FAR Cases

Open DFARS Cases

NASA Procurement Class Deviations

Defense Deviations

55 Open FAR Cases

2022 – 8
2021 – 15
2020 – 10
2019 – 7
2018 – 8
2017 – 4
2016 – 1
2015 – 2

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